IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 33665 of 2003(G)

PETITIONER:

CHRISTOPHER, AGED 59 YEARS,
S/O.C.V.GEORGE, RESIDING AT PUTHEN BUNGLOW,
ASHRAM, KOLLAM 691 002.

BY ADV. SRI.JOHNSON GOMEZ

RESPONDENTS:

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1. THE STATE OF KERALA, REP. BY ITS
SECRETARY, DEPARTMENT FOR LABOUR WELFARE,
SECRETARIAT, TRIVANDRUM.

2. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES, COLLECTORATE, KOLLAM.

3. THE REGIONAL DIRECTOR,
EMPLOYEES STATE INSURANCE CORPORATION,
PANCHDEEP BHAVAN, NORTH SWARAJ ROUND,
THRISSUR 680 020.

4. THE QUILON DISTRICT WHOLE SALE
CO-OPERATIVE CONSUMER STORES LIMITED NO.(Q)(291),
MUNICPAL BUILDINGS, CHAMAKKADA, KOLLAM
REP. BY ITS MANAGING DIRECTOR.

5. THE MANAGER, EMPLOYEES STATE
INSURANCE CORPORATION, LOCAL OFFICE, KOLLAM.

R4 BY ADV. SRI.GEORGE POONTHOTTAM
R3 & R5 BY ADV. SRI.P.SANKARANKUTTY NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITOINER'S EXHIBITS:

EXT.P1 - TRUE COPY OF THE REPRESENTATION DT.24-4-2003 SUBMITTED BY THE PETITIONER BEFORE THE THIRD RESPOKNDENT.

EXT.P2 - TRUE PHOTOSTAT COPY OF THE LETTER DATED 23-5-2003 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER.

EXT.P3- TRUE COPY OF THE LETTER DATED 29-5-2003 ISSUED BY THE FIFTH RESPONDENT TO THE PETITIONER.

EXT.P4- TRUE COPY OF THE REPRESENTATION DATED 31-5-2003 SUBMITTED BY THE PETITIONER BEFORE THE FIFTH RESPONDENT.

EXT.P5- TRUE COPY OF THE NOTICE ISSUED BY THE JOINT REGISTRAR, KOLLAM ON 21-12-2001 TO THE FOURTH RESPONDENT.

RESPONDENTS' EXHIBITS:

EXT.R3 - TRUE COPY OF THE REPRESENTATION DT.20-2-2004.

-TRUE COPY-

P.S.TO JUDGE.

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.33665 of 2003

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Dated this the 27th day of February, 2007.

JUDGMENT

Is an “insured person” under the Employees' State Insurance Act, 1948, hereinafter referred to as the “Act”, to be deprived of his entitlement to medical benefits after retirement on the ground that, for a lap during the period of his employment, the employer enjoyed an order of exemption from the applicability of the provisions of the Act, and thereafter, failed to submit returns?

2. On 11-8-1966, the petitioner entered the service of the 4th respondent. He retired from service on 31-10-2002, long after that establishment was covered under the Act from 30-3-1975. His request for medical benefits in terms of Rule 61 of the Employees' State Insurance (Central) Rules, 1950, the “Rules”, for short, has been

rejected by the ESI Corporation on the ground that the establishment was exempted from the provisions of the Act from 1-4-1997 to 31-3-1999 and that the employer had not filed returns from 1-4-1999 onwards.

3. Petitioner's employment was in an establishment to which the Act applied and therefore, an “insurable employment” in terms of Section 2(13-A) of the Act. He is a person, who was an employee in respect of whom contributions were payable under the Act and who, by reason thereof, is entitled to the benefits of the provisions of the Act. Therefore, he is an “insured person” in terms of Section 2(14) of the Act.

4. Rule 61 of the Rules, reads as follows:

> “**61. Medical Benefits to retired insured persons**.-An insured person who leaves the insurable employment on attaining the age of superannuation after being insured for not less than five years, shall be eligible to receive medical benefits for himself and his spouse at the scale prescribed under the Act and the regulations made thereunder, subject to:-

> (i) the production of proof of his superannuation and having been in the insurable employment for a minimum of five years to the satisfaction of such officer as may be authorised by the Corporation; and
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> (ii) the payment of contribution at the rate of ten rupees per month in lump-sum for one year at a time in advance to the concerned officer of the Corporation in the manner prescribed by it."

5. The aforesaid Rule applies to cases where a person leaves the insurable employment on attaining the age of superannuation after being insured for not less than five years. It provides that an insured person who leaves the insurable employment on attaining the age of superannuation after being insured for not less than five years, shall be eligible to receive medical benefits for himself and his spouse, subject to the production of proof of his superannuation and having been in the insurable employment for a minimum period of five years and the payment of contribution in terms of the statute. There is no doubt that the petitioner is an insured person, that his employment was an insurable employment and that the establishment was covered from 30-3-1975, while the petitioner was in service, having entered on 11-8-1966. He

retired on 31-10-2002. Therefore, the petitioner was in an insurable employment for a period of more than five years.

6. Section 38 of the Act provides that all employees in the establishments to which the Act applies, shall be insured in the manner provided by the Act. The liability to collect and pay the contributions is with the employer. In cases where the employee has also to contribute, it is the obligation of the employer to furnish returns in terms of Section 44. Section 45-B provides that any contribution payable under the Act shall be recovered as an arrear of land revenue. The non-compliance of the provisions of the Act invites penal provisions.

7. Once a person becomes an insured person in terms of Section 2(14), he is entitled to the benefits of the provisions of the Act. That does not depend upon any act or omission of the employer in the matter of compliance of the provisions of the Act, the Regulations framed thereunder and the Rules. Otherwise, the availability of the benefits under the Act, to an employee, would depend upon the volition of the employer. This is not to be, going by the objects sought to be achieved by

the Act and also on a plain reading of the provisions of the Act, the Regulations framed thereunder and the Rules. Therefore, the entitlement of a retired insured person for medical benefits in terms of Rule 61 of the Rules does not depend upon the question whether contributions were made on his account immediately before his superannuation or whether the employer had filed the returns.

8. The establishment, going by Ext.P3, was exempted from 1-4-1997 to 31-3-1999, a period of two years, under Section 87 of the Act. Such exemption during the tenure of an insured person in an insurable employment does not impair his entitlements under the Act, a social welfare legislation and, at any rate, does not snap the continuity of the run and length of his service in the insurable employment, because, his status as in an insurable employment is obtained by operation of law.

9. For the aforesaid reasons, this writ petition is entitled to succeed, resulting in the reliefs sought for being granted.

In the result, the decision contained in Ext.P3 is quashed and it is declared that the petitioner and his family members are entitled to medical benefits in terms of the Act and the Rules on such conditions as to payment by them of any amount as may be necessary in terms of the Act, Rules and the Regulations framed under the Act. The needful action, following the aforesaid declaration, shall be taken by the competent among the respondents on production of a copy of this judgment.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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